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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ERIC B., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JESSICA M. et al.,

Defendants and Appellants.

D055770

(Super. Ct. No. NJ13391B)

APPEALS from a judgment of the Superior Court of San Diego County, Michael
J. Imhoff, Commissioner. Affirmed.

Jessica M. and Ramon B. each appeal the judgment terminating their parental
rights to their son, Eric B. They contend the San Diego County Health and Human
Services Agency (the Agency) did not conduct an adequate adoption assessment and the
evidence is insufficient to support the finding of specific adoptability. We affirm.

BACKGROUND

In June 2006 the Agency filed a dependency petition for five-year-old Eric because he was exposed to violent confrontations between Jessica and her boyfriend, Jay E., and Jay physically abused Eric. Eric was detained in a foster home and adjusted well. In July he was moved to another foster home, which became a placement. After three more moves, Eric was placed with Jessica in August 2007. In September he was detained in Casa de Amparo because Jessica allowed Jay in the home. After two days in Casa de Amparo, Eric was returned to a previous foster home. In February 2008 he was moved to Ramon's home for a 60-day trial visit. Later that month, Eric was returned to his last foster home because Ramon physically abused him and allowed Jessica to have unsupervised visits.

In October 2008 a nonrelative extended family member (NREFM) expressed an interest in adopting Eric. Eric's foster mother did not want Eric to leave, but acknowledged she was not in a position to adopt him.¹ She questioned the NREFM's commitment to Eric and refused to help with Eric's transition to the NREFM's home. The social worker was therefore unable to execute the "progressive transition" she preferred. Instead, Eric spent three weeks in the NREFM's home in December 2008 and January 2009, returned to the foster home for a few weeks, then moved to the NREFM's home in February. In April the NREFM asked the Agency to remove Eric because he was aggressive with her young daughter and was too active.

¹ The record does not disclose why the foster mother was unable to adopt. In July 2009, however, she was about to leave the state for military duty.

In April 2009 a psychologist evaluated Eric. The psychologist diagnosed his condition as attention deficit hyperactivity disorder, posttraumatic stress disorder and dysthymic disorder, and recommended a psychiatric medication evaluation. The psychologist also recommended psychotherapy and noted Eric's "medication needs are not chronic or long-term, but may provide symptom relief for a period of time in which he will be receiving psychotherapy."² The psychologist suggested placement in a "higher level of care" than the NREFM's home, preferably in the foster home Eric had just left.³

In May 2009 Eric was detained in Polinsky Children's Center and then returned to his previous foster home.⁴ The Agency identified a prospective adoptive couple with an approved home study and no children. In June the "telling," the Agency's "full disclosure report" concerning Eric, was read to the prospective adoptive parents. They said they wanted to adopt Eric. Eric's foster mother cooperated with his transition into the prospective adoptive home. The transition began in June with a visit in the foster home and included outings, visits in the prospective adoptive home and telephone contact. The transition was completed in July.

² Eric began individual therapy in late 2008. It was apparently discontinued before the evaluation.

³ That foster home was a Foster Family Home, one level above a licensed foster home.

⁴ There was a younger child in the foster home. The record does not disclose that Eric was aggressive with that child.

In addition to the prospective adoptive couple, the Agency knew of 83 families who would adopt a child with Eric's characteristics, including seven approved adoptive families in San Diego County and 76 families elsewhere. None of the families had met Eric.

By the August 2009 Welfare and Institutions Code⁵ section 366.26 hearing, Eric had been moved more than a dozen times, but several of his placements were in the same foster home.

DISCUSSION

The Agency was required to prepare an adoption assessment with an analysis of the likelihood Eric would be adopted. (§ 366.21, subd. (i)(1)(G).) Adoptability is determined "[o]n the basis of this assessment 'and any other relevant evidence.' " (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732, quoting § 366.26, subd. (c)(1).) An assessment includes a preliminary evaluation of the prospective adoptive parents' ability to meet the child's needs. (§ 366.21, subd. (i)(1)(D).) Jessica and Ramon contend the Agency rushed Eric into the prospective adoptive placement without properly addressing his psychological diagnoses, his need for a higher level of care and the prospective adoptive parents' ability to provide that care. They conclude the lack of a proper adoption assessment left the juvenile court without sufficient evidence to find Eric specifically adoptable.

⁵ All further statutory references are to the Welfare and Institutions Code.

The Agency bore the burden of proving adoptability. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1557, 1559-1561.) "Although a finding of adoptability must be supported by clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is 'likely' that the child will be adopted within a reasonable time." (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.) A child's psychological and behavioral problems may make it more difficult to find adoptive homes, but do not necessarily prevent an adoptability finding. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154; *In re Helen W.* (2007) 150 Cal.App.4th 71, 75, 79.)

A finding of general adoptability "focuses on the minor, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor." (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649, italics omitted.) A child who is not generally adoptable may be specifically adoptable, that is, adoptable "because a prospective adoptive family has been identified as willing to adopt the child." (*Id.* at p. 1650.) "Where the social worker opines that the minor is likely to be adopted based solely on the existence of a prospective adoptive parent who is willing to adopt the minor, an inquiry may be made into whether there is any legal impediment to adoption by that parent [citations]. In such cases, the existence of [a] legal impediment[] to adoption is relevant because the legal impediment would preclude the very basis upon which the social worker formed the opinion that the minor is likely to be adopted." (*Ibid.*)

Here, the court declined to find Eric generally adoptable because there was no evidence the 83 possible adoptive families were aware of Eric's psychological issues or the reasons his earlier placements ended.

By clear and convincing evidence, the court found Eric was specifically adoptable for the following reasons. He was in a home with an approved adoptive home study. The transition to that home had "occurred with minimal serious disruptions" and Eric appeared happy, comfortable and secure. Although he had been in the home for only approximately two months, and there were "issues that could tend to derail the placement," the prospective adoptive parents were "committed to providing the vigilance and the consistency that [were] necessary to address Eric's special needs." They had managed Eric's behavioral difficulties "appropriately and sensitively," "redirect[ed] his behavior to a much more positive level" and were prepared to meet any difficulties that arose once school started.

Jessica and Ramon forfeited their right to challenge the adequacy of the adoption assessment by not doing so in the trial court. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 622-623.) Furthermore, the Agency's reports and the social worker's testimony constitute an assessment substantially complying with the statutory requirements. (*In re John F.* (1994) 27 Cal.App.4th 1365, 1378.) Construing the record most favorably to the judgment (*In re Josue G., supra*, 106 Cal.App.4th at p. 732), substantial evidence supports the court's finding of specific adoptability (*In re Lukas B., supra*, 79 Cal.App.4th at p. 1154). The Agency fully disclosed Eric's history to the prospective adoptive parents, including his aggressive behavior and the reasons he left the NREFM's home. Once Eric left that home and returned to his former foster home, as the psychological evaluator had recommended, Eric became calm and his behavior stabilized. The court authorized a medication evaluation if he destabilized, but that never became

necessary. Eric continued to do fairly well when he was moved to the prospective adoptive home. Although he was sometimes disobedient,⁶ the family had help from an in-home therapist. The prospective adoptive parents had sought an individual therapist for Eric to ease his transition into their home and to alleviate any grieving the adoption might cause him. Eric was on a therapist's waiting list. The prospective adoptive parents were committed to adopting Eric and Eric wanted them to adopt him. Despite his abuse by other men, Eric had formed an attachment to his prospective adoptive father.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

HALLER, Acting P. J.

McINTYRE, J.

⁶ The disobedient behavior included eating candy after being told it was prohibited, becoming agitated when playing a game and breaking the game by throwing it against the wall.